



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 31, 1995

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-055

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28228.

The City of Houston (the "city") received an open records request for any information concerning Claim No. 94-01385. You contend the city may withhold the requested information from required public disclosure pursuant to section 552.103(a) of the Government Code. Section 552.103(a) applies to information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). You assert that the city expects to be made a party to litigation and that the requested information relates to that anticipated litigation.

Section 552.103(a) requires concrete evidence that the claim that litigation may ensue is more than mere conjecture. Open Records Decision No. 518 (1989). A mere threat to sue is not sufficient to establish that litigation is reasonably anticipated. See Open Records Decision No. 331 (1982). There must be some objective indication that the potential party intends to follow through with the threat. See Open Records Decision No. 452 (1986) at 5.

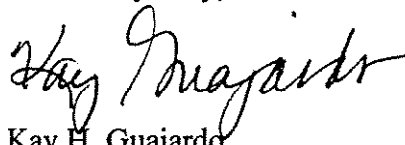
On the other hand, several threats to sue and the hiring of an attorney for the purpose of carrying out the threat is evidence that litigation is reasonably anticipated against a governmental body. See Open Records Decision No. 288 (1981). Moreover, when an attorney for the potential opposing party made a demand for disputed payments and threatened to sue if suitable payments were not made promptly, the exception applies. See Open Records Decision No. 346 (1982).

In this case, a disgruntled citizen has written a letter to the city secretary in which he apparently puts the city on notice of what he contends are violations of his federal and state constitutional rights. He also cites various laws to support his contention that the city violated his civil rights. In other correspondence, the requestor indicates that he wants the requested records because he may bring a legal action against the city. He states in his letter requesting information under the Open Records Act that "this information will be used to file appropriate administrative charges and a class action civil right (1983 action) against the city."

We believe the potential opposing party here has merely threatened to bring a legal action against the city. We have no information that he has taken steps toward litigation, such as hiring an attorney. Thus, we have no concrete evidence that the potential opposing party intends to carry through with his threat. We, therefore, conclude that litigation is not reasonably anticipated at this point. The city may not withhold the requested information based on section 552.103 of the Government Code.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Open Government Section

Ref.: ID# 28228

Enclosures: Submitted documents

cc: Mr. Nathaniel Hopkins
P.O. Box 330292
Houston, Texas 77233
(w/o enclosures)